

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
DARYL BECKMANN, )  
d.b.a. ROYGATE APARTMENTS, )  
Appellant, )  
vs. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 374

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This matter, the appeal of a \$50.00 civil penalty for an alleged smoke emission violation of respondent's Regulation I, came before two members of the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree) at a formal hearing in Washington Commerce Building, Seattle, Washington, at 1:30 p.m., October 4, 1973.

Appellant was represented by its former apartment manager, David A. Bartholomew, appearing pro se. Respondent appeared through its

1 counsel, Keith D. McGoffin. Shirely W. Marshall, Seattle court reporter,  
2 recorded the proceedings.

3 Witnesses were sworn and testified. Exhibits were admitted.  
4 Argument was made by appellant.

5 From testimony heard, exhibits examined and argument considered,  
6 the Pollution Control Hearings Board makes these

7 FINDINGS OF FACT

8 I.

9 On October 19, 1972, after a no-violation emission of smoke was  
10 observed from the boiler stack of the Roygate Apartments, 705 East  
11 Thomas Street, Seattle, King County, by an inspector on respondent's staff,  
12 the assistant manager of the Roygate Apartments was informed by the  
13 inspector of the provisions of Section 9.16 of respondent's Regulation  
14 I. Said section provides that particulant emissions shall not be deemed  
15 to be in violation if caused by an unavoidable mechanical malfunction  
16 or unforeseeable failure of equipment and if the upset condition  
17 immediately is reported to respondent.

18 II.

19 In the morning of May 12, 1973, black smoke in shade of Nos. 3 and  
20 3-3/4 on the Ringelmann Chart was emitted for at least seven consecutive  
21 minutes from the boiler stack of the Roygate Apartments.

22 III.

23 Section 9.03 of respondent's Regulation I makes it unlawful to  
24 cause or allow an air contaminant emission for more than three minutes  
25 in any one hour of a shade darker than No. 2 on the Ringelmann Chart.

26  
27 FINDINGS OF FACT,  
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IV.

An inspector on respondent's staff, after observing the above-described emission, issued Notice of Violation No. 7865 to appellant. Subsequently, and in connection therewith, appellant was served with Notice of Civil Penalty No. 881 in the sum of \$50.00, being one-fifth of the maximum amount which respondent may invoke for a violation of its Regulation I. That penalty is the subject of this appeal.

V.

The instant emission was caused by use of an improper fuel oil. The manager of the Roygate Apartments, David A. Bartholomew, having been manager only four months prior to the instant matter, had not been aware of the rate of fuel oil consumption. When the apartment's fuel supply was exhausted on May 12, 1973, Mr. Bartholomew was unable to obtain an "after hours" delivery of the black oil used by the burner. Under the mistaken impression that a lighter viscosity oil would operate properly in the centrifugal-force burner, he obtained a delivery of lighter Diesel oil.

From these findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS

I.

Appellant was in violation of respondent's Regulation I as cited in Notice of Violation No. 7865.

II.

Appellant should have instructed its manager in the peculiarities of the Roygate Apartment's centrifugal-force burner, the fuel oil

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 required by it and the rate of fuel oil consumption. Appellant,  
2 notified in 1972 of the no-violation provisions of Section 9.16 of  
3 respondent's Regulation I, likewise should have informed its manager of  
4 this opportunity to avoid penalty in the event of an upset condition.

5 III.

6 Notice of Civil Penalty No. 881 is both reasonable and lenient.  
7 Therefore, the Pollution Control Hearings Board makes this

8 ORDER

9 The appeal is denied and Notice of Civil Penalty No. 881 in the  
10 amount of \$50.00 is sustained.

11 DONE at Lacey, Washington this 9th day of October, 1973.

12 POLLUTION CONTROL HEARINGS BOARD

13 Walt Woodward  
14 WALT WOODWARD, Chairman

15 Mary Ellen McCaffree  
16 MARY ELLEN McCAFFREE, Member

17 W. A. Gissberg, the other member of this Board, did not participate  
18 in these proceedings.

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